

ST 00-6

Tax Type: Sales Tax

Issue: Reasonable Cause on Application of Penalties

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

v.

“ARNOLD SCHWARZENBARGER”

Taxpayer

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Docket No. 99-ST-0000

IBT # 0000-0000

Assmt # SV 00000000000000

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Charles Hickman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; “Arnold Schwarzenbarger” appearing *pro se*.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Assessment to “Arnold Schwarzenbarger” (“taxpayer”) for additional tax owed on the purchase of a vehicle. The taxpayer timely protested the Notice. He does not contest the tax but requests that the penalty be abated due to reasonable cause. For the following reasons, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On December 31, 1997, the taxpayer purchased a 1997 Nissan Pathfinder in (Another State). At the time of the purchase, the taxpayer signed a security agreement

with the dealership. The agreement includes an amount for official fees/license.  
(Taxpayer Ex. #6)

2. In April of 1998, the taxpayer received a license renewal notice that was for his old vehicle rather than the Pathfinder. The taxpayer went to the Department of Motor Vehicles to get the Pathfinder registered. He then filed an Illinois use tax return for the Pathfinder. The return included a notation that the use taxes were paid at the dealership.  
(Dept. Ex. #1; Tr. P. 9)

3. The dealership had not remitted the use taxes at the time of purchase. On October 31, 1998, the dealership issued a check to the Department for the full amount of the use taxes. (Taxpayer Ex. #2)

4. On November 20, 1998, the Department issued a Notice to the taxpayer which included a late-filing penalty and a late-payment penalty. The Notice was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

#### CONCLUSIONS OF LAW:

The Department imposed the penalties for the late filing and late payment of the use tax pursuant to section 3-3 of the Uniform Penalty and Interest Act (UPIA) (35 ILCS 735/3-1 et seq.) Section 3-8 of the UPIA provides a basis for the abatement of the section 3-3 penalty and states in part as follows:

“The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.” (35 ILCS 735/3-8)

The Department’s regulations concerning reasonable cause provide as follows:

“The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill.Admin.Code §700.400(b)

Under the circumstances of this case, the taxpayer provided sufficient evidence to show reasonable cause. At the time that he purchased the vehicle, the taxpayer paid an amount to cover the use taxes and believed that the dealership would remit this amount to the Department. Although the dealership was late remitting the tax, the taxpayer made a good faith effort to pay the taxes at the time he purchased the Pathfinder.

Recommendation:

For the foregoing reasons, it is recommended that the penalties be abated.

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Linda Olivero  
Administrative Law Judge

Enter: 1/12/2000